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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

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SUMMARY RECORD OF THE 1190th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 5 March 1997, at 3 p.m.

Chairman: Mr. BANTON

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Seventh periodic report of Guatemala (CERD/C/292/Add.1; HRI/CORE/1/Add.47)

1. At the invitation of the Chairman, the members of the Guatemalan delegation took seats at the Committee table.

2. Mr. URRUELA PRADO (Guatemala) said he was grateful for the opportunity to continue his Government's constructive working relationship with the Committee. That the delegation included a member of ministerial rank was evidence of his Government's commitment to complying with its international obligations in the field of human rights. He reiterated its invitation to the Committee's Country Rapporteur for Guatemala to visit the country to assist the Government in implementing the provisions of the Convention.

3. Mrs. ALTOLAGUIRRE (Guatemala) said that the Government was complying with the Committee's request at its forty-sixth session in submitting an updated report. Referring to the statement made by Mr. Alvaro Arzú Irigoyen, the President of Guatemala, on taking office in January 1996, in which he had stressed, inter alia, the diversity and plurality of Guatemalan society and had called for justice and equity in economic, social and inter-ethnic relations as the foundation for full participatory democracy based on the rule of law, she said that the Government was forging ahead with the decisions and measures needed to achieve that goal.

4. The new Government had vigorously pursued its primary goal of concluding the Agreement on a Firm and Lasting Peace. Her delegation came with good news. The signing of the Peace Agreement on 29 December 1996 had put an end to three decades of armed conflict and a painful period in the history of the Guatemalan nation. The task ahead was to preserve and consolidate peace and, with the concerted efforts of all Guatemalans, to implement the comprehensive social and political agenda, setting the stage for future development. It should be remembered that, in addition to prevailing domestic political, economic and social conditions, one of the main causes of the conflict had been the effects of the cold war following the Cuban revolution, with the emergence of irregular armed movements and violence as a path to power. With the end of the cold war, the road to peace had been opened. The Agreement on a Firm and Lasting Peace provided an agenda for national consensus, reconciliation and sustained governance, affording promising prospects for democracy in Guatemala through new institutions and the participation of all sectors of the population, including those that had traditionally been marginalized. The Government was committed to constructing a democratic, multi-ethnic, pluricultural and multilingual society based on social justice. The Commission on Human Rights had recognized the broadened political scope for public participation in that process.

5. She outlined the various agreements which had been reached in the course of the lengthy negotiation process since the conclusion, with the United Nations as moderator, of the Framework Agreement for the Resumption of the Negotiating Process between the Government of Guatemala and the Guatemalan

National Revolutionary Unity Movement (URNG) in January 1994. They included the Comprehensive Agreement on Human Rights (1994), the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict (1994), the Agreement on the establishment of the Commission to clarify past human rights violations and acts of violence (1994), the Agreement on Identity and Rights of Indigenous Peoples (1995), the Agreement on Social and Economic Aspects and the Agrarian Situation (1996), the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society (1996), and, finally in December 1996, the agreement on constitutional reforms and the electoral regime and the agreement on the basis for the integration of URNG into the political life of the country, culminating in the Agreement on a Firm and Lasting Peace. With the exception of the Comprehensive Agreement on Human Rights, which had entered into force immediately, the other agreements had come into force along with the Agreement on a Firm and Lasting Peace.

6. Turning to the seventh periodic report, she drew attention to some recent developments which had not been included in that report or in the further updating report which had been submitted to the Committee on the previous day. On 19 March 1996, the Congress of the Republic had approved ILO Convention No. 169 concerning Indigenous and Tribal People in Independent Countries and had deposited the instrument of ratification in May. With its incorporation into domestic law and the implementation of the Agreement on Identity and Rights of Indigenous Peoples, racial and cultural pluralism based on equity were becoming a reality. The Mayan population could now enjoy benefits and guarantees in regard to property, working conditions, vocational training, crafts and rural industries, health, social security, education, the administration of justice, the environment and natural resources. On 13 February 1997, a multilingual Centre for the Administration of Justice had been set up in the Ixil Triangle under the sponsorship of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA) and the Swedish Government.

7. An example of measures being taken to implement the Government's policy of eliminating racial discrimination was the signing, in February 1997, of an agreement between the State of Guatemala, represented by the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH), and the community of Colotenango, which had filed a complaint against the State following an attack by members of the Civilian Self-Defence Patrols (PACs) against community demonstrators, leaving one dead and two wounded. Under the agreement, the State was to provide direct compensation for the victims and undertake 15 building projects in various villages. The Government reiterated its commitment to the international community to reject any form of racial discrimination, consolidating that commitment through the implementation of the Agreement on Identity and Rights of Indigenous Peoples.

8. The Congressional Commission on Legislation and Constitutional Issues had given a favourable opinion on the bill relating to the inclusion of the offence of racial discrimination in the Penal Code. The bill had been submitted to Congress, but was still being studied and debated at the request of the Commission on Indigenous Affairs. COPREDEH had reiterated to Congress the need to incorporate the offence in the Penal Code in compliance with the

measures prescribed in the Convention. The Broadcasting Act included a provision prohibiting broadcasts constituting an incitement to racial discrimination.

9. Workshops held in 1996 under the auspices of the Guatemalan Fund for Indigenous Development (FODIGUA) had produced a document, currently being printed for submission to Congress, proposing amendments to the section of article 70 of the Constitution concerning indigenous communities. Various State bodies, headed by FODIGUA, were ensuring, with the assistance of the Government of Sweden and the United Nations Development Programme (UNDP), that the provisions of the Agreement on Identity and Rights of Indigenous Peoples were made known to the general public. The decree establishing Voluntary Civil Defence Committees (CVDCs) had been repealed and by December 1996 all CVDCs had been demobilized and disbanded.

10. Between 1986 and 31 December 1996, a total of 32,953 refugees had returned to Guatemala from neighbouring countries, particularly Mexico, 4,026 of them in 1996. Assistance had so far been provided to 29 returnee families in 1997. With regard to the Communities in Resistance (CPRs), the Government had provided assistance to 21 families from the Sierra CPR, department of Quiché, for resettlement in Alta Verapaz. Further assistance was being provided for the resettlement of returnees and displaced persons in other regions. The financing of projects by FODIGUA had nearly quadrupled in 1996, with a minimum of 20 million quetzales set aside in 1997 for 400 projects; a further 75 million quetzales in international funding was needed to extend the assistance to all communities. Resolutions adopted by the Office of the Human Rights Procurator in its 1996 report invoked the Convention, which was a positive sign of the steps being taken to safeguard the rights covered by the Convention in Guatemala.

11. Further measures were being taken to implement bilingual intercultural education policies and strategies, with 5,960 teachers working with 330,000 indigenous children in 1,277 schools in 12 departments. Fourteen of the 21 languages spoken in Guatemala in addition to Spanish were taught. Those figures represented only 12 per cent of needs nationwide. An intercultural education project, beginning in 1997 and consisting in heightening awareness of Mayan culture among Spanish-speaking teachers, was planned in the department of San Marcos. Five hundred thousand primary school textbooks in the four basic Mayan languages were being prepared for distribution to 1,277 schools. All those measures testified to the Government's efforts in the previous year to promote the multiracial, pluricultural development of society, although it was recognized that much remained to be done.

12. On 3 March 1997, the final cease-fire had taken effect and United Nations verification had begun. As of the end of February, the United Nations had been given all the information needed for the demobilization process. The Guatemalan army units designated in the cease-fire agreement and the members of the URNG would be moving to the designated assembly points in March 1997. The gradual demobilization and disarmament process was expected to culminate in the final demobilization of URNG by 1 May 1997 at the latest.

13. Mr. YUTZIS (Country Rapporteur) said that the Committee appreciated the efforts being made to improve the situation of all Guatemalans after the long period of armed conflict. He would begin by highlighting some of the main points of the sixth report of Mr. David Stephen, the Director of MINUGUA, to the United Nations General Assembly, as summarized by the Director in a public statement on 26 February 1997. Positive developments referred to in the report included the decline in the number of complaints of human rights violations, the process of demobilization and disarmament of the CVDCs, a greater willingness to bring to account members of the armed forces who had committed unlawful acts, and encouraging developments in the Office of the Public Prosecutor and COPREDEH.

14. Guatemala's transitional period offered an historic opportunity to improve conditions in the country through the establishment of the rule of law and peaceful coexistence. However, the emergence of a new society was a painful process which required a change in attitudes, values and social behaviour.

15. The Agreement on a Firm and Lasting Peace and other agreements, including that on the identity and rights of indigenous peoples, provided a sound basis for future development. The role of MINUGUA was also of vital importance. However, greater attention needed to be paid to amending legislation that was inherently discriminatory. Despite the progress made, there were still areas of concern, not least the continuing climate of violence and intimidation and a lack of respect for human life. State officials were not blameless in that regard and the Government needed to step up efforts to ensure that human rights violations did not go unpunished.

16. Although the report of Mrs. Monica Pinto, the Independent Expert (E/CN.4/1997/90), indicated that the number of human rights violations and cases of torture and cruel or degrading treatment or punishment was decreasing, the number of complaints remained alarmingly high. He invited the delegation to comment on the particular cases that had been brought to his attention. For example, it had been alleged that, on 5 October 1995, military personnel had used violence against civilian returnees in Xamán. On 30 May 1996, the judge of the Criminal Court of First Instance in Cobán had freed 8 of the 25 soldiers responsible for the events of 5 October. Although he had been subsequently taken off the case, the eight soldiers were still free. On 15 February 1996, Miguel Us Mejía and Lucía Tiu Tum had been killed in Santa Lucía La Reforma. Apparently, investigations into the killings were being delayed. Other cases included the assault against Julio Ixmatá Tziquín; the abduction of Samuel Merida, attacks on the headquarters of the Peasant Unity Committee; the attack on Arnoldo Xi and his subsequent disappearance; the arrest of and assault on leaders of the National Indigenous and Peasant Coordinating Committee (CONIC); the racial insults directed at Juana Velásquez García, who had subsequently been arbitrarily detained; the forced sterilization of a number of indigenous settlers and their wives; and events in San Marcos and Sololá which had required the intervention of MINUGUA.

17. More information was needed on the disbanding of military commissions and committees, including the CDVCs and the PACs. It appeared that many members of those bodies were not aware that they could stand down or feared

reprisals if they left. It was unfortunate that as such bodies were being disbanded, other groups such as "Jaguar Justiciero" and groups linked to the army were emerging.

18. Information available indicated that there was still considerable tension concerning the question of land and access to water. Problems were compounded by the existence of numerous refugees, returnees, displaced persons and CPRs. Small landowners, who accounted for 89 per cent of the population, occupied only about 16.4 per cent of cultivable land, which meant that many peasants, including Indians, were deprived of land they could work. Of equal concern was the advent of a clandestine and militant organization, the Emerging Committee for the Defence of Private Property.

19. There was some confusion as to the actual size of the indigenous population; that matter should be clarified. Information should also be provided on the use of minority languages, as sources available indicated that there were problems in that area. The establishment of a Secretariat for Indigenous Affairs subordinate to the Office of the Attorney-General was commendable; the Committee would welcome additional information on its activities.

20. It also seemed that the administration of justice, particularly as it affected the more marginalized sectors of the population, needed to be improved; sources indicated a certain discriminatory attitude among many judges. It was of great concern that there was a growing tendency for people to take the law into their own hands and administer punishment without recourse to the courts, which had, in some cases, led to persons being lynched.

21. The authorities should make a concerted effort to discover the whereabouts of clandestine graves and, in particular, clarify whether missing persons were indeed dead or had disappeared. There also seemed to be a problem in that investigations into the events leading to the deaths of many people and court proceedings were being hampered in some cases by the requirement that a survivor of the incident, not just a witness, should testify to what had happened. It was unfortunate that the death penalty was being extended to cover additional crimes, including kidnapping.

22. With regard to article 7, he noted that there had been many threats against journalists and even several murders. In any transition period, the media were perhaps the only opposition which existed, but if he had to choose between a situation in which there was no information whatsoever or one in which it was excessive or even distorted, he would prefer the latter. Freedom of the press was essential to rebuilding democracy.

23. In closing, he said that there had been many useful initiatives concerning displaced persons, refugees and returnees, but unfortunately resources were lacking to help such persons overcome their plight and recover their historic identity.

24. Mr. DIACONU, commending the delegation of Guatemala for its latest report, which had been submitted less than two years after its previous one despite the enormous problems which that country was facing, said that he would like to raise a number of points.

25. Notwithstanding the requirements under article 4 (a) of the Convention, he had found no specific reference in the seventh report to legislation prohibiting racial or ethnic discrimination.

26. Paragraph 27 of the report spoke of adding the offence of racial and ethnic discrimination to the Penal Code. He did not know the content of the relevant bill and asked whether it would be sufficient to cover all areas concerned.

27. Paragraph 29 stated that the legislative measures currently being considered would contribute substantially to the more effective implementation of the principles laid down in article 4 of the Convention. Why would they only do so "substantially"? That sounded like a limitation.

28. Concerning the administration of justice, he was surprised that the report contained no information on judicial proceedings initiated in the country's courts for acts of discrimination. According to paragraph 34, the executive staff of the Office of the Attorney-General had been encouraged to learn two Mayan languages, yet the Guatemalan Constitution had been translated into four Mayan languages. Should not the executive staff be required to learn all four? Also, why were the executive staff alone concerned? In his view, prosecutors and judges must also learn all those languages.

29. There was a need for a far-reaching educational programme, the country's illiteracy rate being high, especially among the Mayan population. Every effort must be made to promote bilingual education, which should begin with a Mayan language and add Spanish later on.

30. The report contained few economic and social data on the various sectors of the population that would help the Committee assess the situation with regard to racial discrimination and the extent to which citizens enjoyed the rights set out under article 5 of the Convention. It was not clear to him what the Government was doing to eliminate such discrimination.

31. Mr. SHERIFIS said that he sought clarification in a few specific areas. Noting that many thousands of citizens had been repatriated, most of them Indians, and that funds had been made available to assist them, he assumed that in the meantime other people had moved into their homes and had begun to use their lands. He asked how Guatemala was dealing with that problem and what the legal situation was.

32. As he understood paragraph 26 of the report, Guatemala was in the process of initiating the procedure for making the declaration under article 14 of the Convention. Could the delegation of Guatemala confirm that understanding?

33. Welcoming the initiatives described in paragraph 35, he nevertheless drew attention to the Committee's recommendation aimed at ensuring full compliance with article 7 of the Convention.

34. Mr. de GOUTTES, thanking the delegation of Guatemala for the wealth of information which it had provided in its seventh report and in its presentation, said that he still had a number of brief questions.

35. Concerning paragraph 26, the delegation had stated that the bill referred to therein, which would incorporate the provisions of the Convention in the Penal Code, had been submitted to Congress. He would like to know whether in the bill provision had been made for all acts of racism and racial discrimination covered by article 4 of the Convention, including the prohibition of organizations which promoted and incited racial and ethnic discrimination and disseminated racist propaganda. Also with regard to paragraph 26, he inquired whether the Government of Guatemala had, as promised, completed the proceedings for recognition of the individual communications procedure under article 14 of the Convention.

36. In connection with paragraph 32, it was hard to imagine that the Government of Guatemala had not had a single official report of any judicial proceedings initiated for acts of discrimination. He reminded the delegation that at its previous session the Committee had not accepted the statement that no form of racial discrimination was practised against persons, groups of persons or institutions, had considered that de facto racial discrimination persisted against the indigenous communities representing the majority of the Guatemalan people, and had expressed profound concern at widespread discrimination affecting the indigenous communities and excluding them from the enjoyment of their civil, political, economic, social and cultural rights (A/50/18, paras. 304-305).

37. Concerning the continued existence of self-defence groups, to which Mr. Yutzis had made reference, he observed that according to the latest report of Amnesty International, civil defence patrols waging "social-cleansing campaigns" to fight urban crime had forcibly enrolled peasants from the indigenous population.

38. In reality, the absence of complaints, prosecution or sentencing suggested ignorance of their rights on the part of members of the indigenous population, a lack of confidence in the police and the justice system, and perhaps also an indifference in the police force and the courts towards complaints of ethnic and racial discrimination. He wondered whether that was not an example of impunity. In that connection, he would like to know the findings of the Truth Commission, which had been established to cast light on human rights violations in Guatemala.

39. Drawing attention to the Committee's General Recommendation XIII, he said that the training of law enforcement officials in human rights was more important than ever in order to put an end to violence in the police and armed forces. What efforts were being made to heighten awareness of problems of ethnic and racial discrimination within the police, the military, and prison staff and among judges?

40. Lastly, he would like to know what was being done to inform the public about those issues with a view to promoting inter-ethnic understanding, which was essential in the current context. Also, had any effort been made to disseminate Guatemala's report and the Committee's concluding observations?

41. Mr. van BOVEN said that it was essential for members of the indigenous population to have access to effective protection mechanisms and remedies when they had been victims of violence. There could be no genuine reconciliation in Guatemala as long as impunity prevailed. He inquired what was Guatemala's policy towards combating that phenomenon.

42. Noting with concern that the Government of Guatemala had not followed up all the recommendations and concluding observations made by the Committee in its 1995 report, he hoped that greater attention would be devoted to such follow-up in the future.

43. While welcoming Guatemala's ratification of ILO Convention No. 169, he expressed concern that there were still a number of recommendations made by the Committee on 17 March 1995 which had not been pursued. In that context, it would be useful to have the exact wording of the proposed amendment of the Penal Code so that the Committee could assess to what extent the relevant bill fulfilled the requirements of article 4 of the Convention. In addition, the report did not contain the information requested in paragraph 315 of document A/50/18 (concluding observations on Guatemala) on cases of complaints of racial discrimination.

44. He reiterated the importance of reviewing and improving the training of law enforcement officials and joined his colleagues in urging the Guatemalan Government to make the declaration called for under article 14, paragraph 1, of the Convention. He took the opportunity to repeat the appeal made in paragraph 319 of document A/50/18 for the State party to ensure the dissemination of the country report and other official documents relating to the consideration of its report.

45. Finally, he urged Guatemala to add its name to the list of States parties ratifying the amendment to article 8, paragraph 6, of the Convention, which would allocate a portion of the Committee's expenses to the regular budget of the United Nations.

46. Mr. GARVALOV acknowledged that Guatemala had embarked upon a difficult path towards progress, and wished the Government every success in the achievement of its goals, which would ultimately benefit the people of Guatemala. When the Committee had discussed the previous report of Guatemala in 1995, there had been an overwhelming impression that the Government did not admit the existence of racial discrimination. The present report, by contrast, was straightforward and frank; he therefore believed the Committee would not maintain its view that Guatemala denied the existence of racial discrimination.

47. Nevertheless, he wished to raise some practical points which needed clarification. Whereas paragraph 11 of the seventh report suggested the existence of discrimination in a "veiled" form, several sources, including United Nations bodies, had confirmed that the indigenous inhabitants of

Guatemala were largely outside the political, social, economic and cultural mainstream and suffered human rights abuses. He wished to know the Guatemalan Government's assessment of the effectiveness of steps taken to put an end to such abuses, and asked for clarification of the "certain cases", mentioned in paragraph 17, and the restrictions applied in those cases. Clarification was also required in the case of the first initiative mentioned under paragraph 31. Were there in fact Guatemalans who practised racial discrimination? And were there penalties for acts of discrimination? With regard to paragraph 35, he was curious to know the reaction of indigenous people to the measures being implemented in the fields of education, culture and information.

48. He joined his colleagues in expressing disappointment at the information provided on articles 4 and 6, but welcomed the adoption of measures under article 7.

49. Mr. CHIGOVERA inquired about the status of the bill to which Mr. van Boven had referred. He wondered whether that bill took into account the aspects of the State party's obligation outlined under article 4 (a), (b) and (c). If the bill was still under discussion and those aspects had not been incorporated in the text, he urged the Government to review it before it was enacted into law.

50. He also wondered why there had been no official reports of judicial proceedings for acts of discrimination, as stated in paragraph 32 of the report, even though paragraph 9 explicitly acknowledged the existence of racial discrimination. Why had the courts or judicial processes not been used in Guatemala to protect victims of such discrimination?

51. Mr. VALENCIA RODRIGUEZ considered that the situation in Guatemala should be viewed as a product of its diverse ethnic components and the size of the indigenous population in relation to the total population. The issue of racial discrimination could not be separated from the general question of human rights, which had been further compounded in Guatemala by the lengthy armed struggle. The path had been cleared for the full implementation of the Convention and other human rights standards. While the Committee did not expect immediate results, Guatemala had shown signs of progress through its compliance with important domestic and international legal instruments.

52. The Committee urged the Government of Guatemala to keep it informed of the results achieved through the measures it had taken, and to tackle the remaining urgent issues impeding national stability. For example, it was vital to end the prevailing climate of violence and punish perpetrators of human rights abuses through a system of impartial investigations and accelerated judicial procedures. In that regard, the re-establishment of respect for, and confidence in, the judiciary was of great importance.

53. It was also essential for the Government to actively promote respect for the rights covered by article 5, particularly for the indigenous populations. Land redistribution, particularly to indigenous peoples, was the only means of ensuring economic stability for that previously unprotected group. Education, tolerance and harmony should be increased for all Guatemalans, bearing in mind

the country's high level of illiteracy. He urged the Government to intensify its efforts to provide opportunities for fuller participation of the people, regardless of ethnic origin, in national life.

54. Mr. FERRERO COSTA said the Committee could regard the seventh periodic report of Guatemala in a positive light because the country had clearly entered an important transitional phase after a difficult past. There had been three outstanding developments for Guatemala in recent times, namely, the signing of the peace agreements, the signing of the Agreement on Identity and Rights of Indigenous People, and the ratification of ILO Convention No. 169, which had been the subject of a recommendation in the Committee's previous concluding observations. However, many problems remained and the Committee looked forward to Guatemala's next report with details on how the three progressive measures were working in practice.

55. The report had frankly presented both positive and negative elements, recognizing the reality of racial discrimination in Guatemalan society, but it had been incomplete in some respects. There was therefore a need for further information on the practical application of standards, policies and provisions, particularly as they affected indigenous people. He believed it was worth repeating the appeal made by the two previous speakers that the Guatemalan Government should act on the recommendations made in paragraphs 313 and 315 of the Committee's report on its forty-eighth session (A/50/18).

56. He also wished to stress the vital importance of land ownership, and asked how the Government intended to manage the distribution of land and what special measures were planned to redress the historical problem, particularly with regard to indigenous communities. What practical results had the Government foreseen in its efforts to increase the participation of indigenous people in all aspects of national life? Another area of concern for the Committee related to guarantees that indigenous people would have effective recourse to the legal system, as provided for in article 6 of the Convention. The fact, as stated in paragraph 32 of the report, that there were no complaints before the courts did not mean there were no problems: the issue of language had been cited in paragraph 34 as one of the barriers which restricted the indigenous population's access to the country's legal system. Consequently, the Committee required additional information on the attention paid to the specific problems of indigenous people and their opportunities for submitting individual complaints on human rights abuses to the courts and the authorities. Lastly, he raised the issue of impunity, stressing that, as the Guatemalan Government faced the future, it could not afford to ignore the unpunished acts of the past.

57. He welcomed the very positive developments in Guatemala and expressed the hope that the Country Rapporteur would be able to accept the invitation to visit Guatemala.

The meeting rose at 6 p.m.